

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300
Sacramento, California 95833
(916) 274-5751
FAX (916) 274-5785

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APR 13 2011

APPEAL FORM

OSH Appeals Board

Inspection No. 300752581

2011-R 1 D5 -0938

Employer:

CA DEPT. OF MENTAL HEALTH
NAPA STATE HOSPITAL

Address:

1600 NINTH STREET
SACRAMENTO, CA 95814

1. You have only 15 working days from receipt of a citation to appeal.
2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

**FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION**

1. This is an Appeal from:

☒ CITATION NO(s) 1 Item No.(s) All items are appealed

☐ NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____

☐ SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: **(Check all that apply)**

☒ The safety order was not violated.

☒ The classification (i.e., serious, willful, repeat) is incorrect.

☒ The abatement requirements are unreasonable.

☒ Required changes

☒ Time allowed to complete changes

☒ The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

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3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

OSH Appeals Board

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

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(Signature of Employer or Employer's Representative)

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ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

April 12, 2011

(Date)

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OSH Appeals Board

A P P E A L F O R M

Inspection No. 300752581

2011-R 1 D5 -0939

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NAPA STATE HOSPITAL

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- ☐ NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____
- ☐ SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: **(Check all that apply)**

- ☒ The safety order was not violated.
- ☒ The classification (i.e., serious, willful, repeat) is incorrect.
- ☒ The abatement requirements are unreasonable.
- ☒ Required changes ☒ Time allowed to complete changes
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OSH Appeals Board

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7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).

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(Type or Print Name)

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(Title)

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A P P E A L F O R M

Inspection No. 300752581

2011-R 1 D5 -0940 —

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NAPA STATE HOSPITAL

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- ☒ CITATION NO(s) 3 Item No.(s) All items are appealed
- ☐ NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s) _____
- ☐ SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: **(Check all that apply)**

- ☒ The safety order was not violated.
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- ☒ The abatement requirements are unreasonable.
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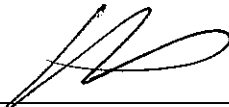
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(Type or Print Name)

ATTORNEY AT LAW
(Title)

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(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN CA 95677
(City) (State) (ZIP Code)

916/624-4551 April 12, 2011
(Telephone) (Date)

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A P P E A L F O R M

Inspection No. 300752581

2011-R 1 D5 -0941 —

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CITATION NO(s). _____ Item No(s). _____

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APPEAL FORM

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Inspection No. 300752581

2011-R | D5 -0942

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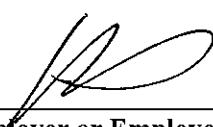
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1600 NINTH STREET
SACRAMENTO, CA 95814

1. You have only 15 working days from receipt of a citation to appeal.
2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

**FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION**

1. This is an Appeal from:

☒ CITATION NO(s) 6 Item No.(s) All items are appealed

☐ NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s). _____ Item No(s). _____

☐ SPECIAL ORDER/SPECIAL ACTION NO: _____ Item No.(s) _____

2. Specific ground(s) for this appeal are: **(Check all that apply)**

☒ The safety order was not violated.

☒ The classification (i.e., serious, willful, repeat) is incorrect.

☒ The abatement requirements are unreasonable.

☒ Required changes

☒ Time allowed to complete changes

☒ The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

ATTACHMENT TO APPEAL

RECEIVED

APR 13 2011

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

OSH Appeals Board

1. The Division of Occupational Safety and Health ("Division") does not have jurisdiction over the subject place of employment;
2. The inspection(s) was invalid;
3. The citation does not give notice of the violation and/or is otherwise defective;
4. The safety order cited is vague and/or ambiguous;
5. The citation was not issued timely;
6. An exception to the safety order exempts compliance;
7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
8. Independent employee action;
9. It is impossible to comply with the safety order;
10. The citation was issued to the wrong employer and/or a non-existing employer;
11. No employee of Appellant was exposed to the alleged violation.
12. The citation does not correctly identify a location at which employees of Appellant were working.
13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
14. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
15. Appellant acted with due diligence to comply with all regulatory requirements.
16. Appellant contends it had a reasonable expectation of privacy to be free of governmental inspections at its private place of employment, which place of employment was the subject of the inspection of the Division in this matter; that the inspection which did occur was illegal and in violation of Appellant's Fourth Amendment rights as no designated person of Appellant authorized the inspection conducted by the Division of said place of employment; that no inspection warrant was obtained to conduct said inspection; nor did the inspection occur pursuant to some other exception to the warrant requirement of Labor Code § 6314(b).

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

4. 

(Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

(Address) {Address where all communications from the Appeals Board will be sent}

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

April 12, 2011

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

IMPORTANT INFORMATION

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
- B. You must complete *a separate appeal form for each citation or notification* you wish to appeal and *attach a copy of the complete citation or notification that you are appealing*.
- C. If the citation or notification being appealed includes more than one item, **do not use separate appeal forms for each item**. Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form (for example, "Citation No. 1, Item Nos. 2, 5 and 8.")
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4, above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative changes address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- G. Mail each completed appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.
- H. Late appeals will not be accepted unless good cause is shown.